

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

Jane Does 1-9, )  
                    )  
                    Plaintiffs, )  
vs.                ) 7:20cv00947  
                    )  
Collins Murphy, Sharon )  
Hammons, Brenda F. Watkins, )  
Limestone University, MG )  
Freesites, LTD d/b/a )  
Pornhub.com, MG Freesites II, )  
LTD, MindGeek S.A.R.L., )  
MindGeek USA, Inc., MG Billing )  
LTD., and Hammy Media LTD )  
d/b/a xHamster.com, )  
Trafficstars LTD, Wisebits )  
LTD, xHamster IP Holdings LTD, )  
Wisebits IP LTD, )  
                    )  
                    Defendants. )  
\_\_\_\_\_  
Jane Doe )  
                    )  
                    Plaintiff, )  
vs.                ) 7:21cv03193  
                    )  
Limestone University F/K/A )  
Limestone College, Collins )  
Murphy, MG Freesites LTD d/b/a )  
Pornhub.com and Hammy Media )  
LTD d/b/a xHamster.com, )  
                    )  
                    Defendants. )  
\_\_\_\_\_)

)  
Jane Doe 1, Jane Doe 2, John )  
Doe 1, and John Doe 2 )  
)  
Plaintiffs, )  
vs. ) 7:22cv03576  
)  
Collins Murphy; Limestone )  
University, a/k/a Limestone )  
College, Brenda F. Watkins, )  
Sharon Hammonds, MindGeek )  
Holding a/ka/ MindGeek USA )  
Inc. a/k/a MG Holdings USA )  
Corp. d/b/a Pornhub.com, and )  
Hammy Media LTD. d/b/a )  
xHamster.com, )  
)  
Defendants. ) August 16, 2023  
\_\_\_\_\_  
)

TRANSCRIPT OF MOTIONS HEARING

BEFORE THE HONORABLE DONALD C. COGGINS, JR.  
United States District Judge, presiding

A P P E A R A N C E S:

For Plaintiffs:

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National Center on Sexual  
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For Defendants Hammy Media LTD:

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For Defendant MG Freesites:

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2049 Century Park East 18th Floor  
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ALSO PRESENT:

Hannah Rogers Metcalfe, Esquire  
Valentin D. Gurvits, Esquire  
Mark Brandon Goddard, Jr., Esquire  
Tyler Smyth Thompson, Esquire  
Liz Jeannette Shepherd, Esquire  
Wesley D. Few, Esquire

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Proceeding recorded by stenomask, transcript produced by computer-aided software.

## Motions to Dismiss - MG Billing LTD, MindGeek S.A.R.L, MindGeek USA Inc.

## **P R O C E E D I N G S**

(Court is called to order on Wednesday, the 16th day of August 2023, at 2:00 p.m.)

**THE COURT:** All right.

We're here this afternoon in the case of, or cases, involving Does versus Murphy, et. al., which is 20cv947, and Doe versus Limestone University, et. al., which is 21-3193. And we have yet another grouping that will join us to talk about status after we take care of these motions.

Motions in this case that are pending this afternoon,  
if I have gotten these correct, are a motion for judgment on  
the pleadings by Defendant Hammy Media. I note that in the --  
this is in the 20-947 case. In the 21-3193 case, there's a  
renewed motion for judgment on the pleadings. But I believe  
it's largely identical. We also have a motion to dismiss for  
failure to state a claim and a motion to dismiss for lack of  
jurisdiction filed on behalf of MG Billing, LTD, MindGeek  
S.A.R.L. and MindGeek USA Inc. Have a motion to dismiss for  
lack of jurisdiction and for failure to state a claim filed by  
Trafficstars LTD.

21 We have a motion to dismiss for lack of jurisdiction  
22 filed by xHamster IP Holdings LTD. We have a motion to dismiss  
23 for failure to state a claim and a motion to dismiss for lack  
24 of jurisdiction by Wisebits IP LTD; a motion to dismiss for  
25 failure to state a claim and a motion to dismiss for lack of

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1 jurisdiction filed by Wisebits LTD. And I believe that covers  
2 the motions that I have.

3 Now, normally, if we didn't have so many, I would  
4 turn you loose on these motions in turn. But if we do that,  
5 and particularly in light of what you have so graciously  
6 inundated me with, we're liable to be here until 10 o'clock  
7 tonight. And I don't think any of us wants to do that. So let  
8 me see if we can short-circuit a little bit. Because all of  
9 these -- we do have one motion for judgment on the pleadings.  
10 But pretty much all the rest of them are jurisdiction and  
11 12(b) (6) issues.

12 It's my understanding from the amended complaint,  
13 which I think now is the Fifth Amended Complaint if I recall  
14 correctly, the film of these young ladies was uploaded to  
15 Pornhub, which I believe is MG Freesites, and xHamster, which  
16 is Hammy Media.

17 As to these other entities, which are MG Freesites II  
18 LTD, MindGeek S.A.R.L, MindGeek USA, Inc, MG Billing LTD, and  
19 Trafficstars, Wisebits and Wisebits IP and xHamster IP  
20 Holdings, all of those, I believe, have allegations related to  
21 alter ego and joint and several liability and some type of  
22 relationship. Since those are more tenuous in their  
23 connection, let's -- let's start with those first.

24 And we'll start with the MG Billing, MindGeek crowd  
25 on those related ones and then we'll -- we'll get to

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1 Trafficstars, Wisebits, and those. And I'll let you give me  
2 just a very brief overview on jurisdiction and failure to state  
3 a claim. And then I'll hear from the plaintiff. And what I  
4 really -- I know what they're going to tell me. What I really  
5 want to hear from the plaintiff is, you know, what facts we  
6 have that establish some type of alter ego or some type of  
7 joint liability. Because as you-all know, under 12(b)(6), it's  
8 not enough just to make some legal conclusion, throw something  
9 up against the wall and see if it sticks. We need to have some  
10 facts as to what those folks had to do with this.

11 So let me hear from the defense first. And then,  
12 I'll hear from the plaintiff.

13 **MR. MAYER:** Thank -- thank you, Your Honor.

14 Marc Mayer on behalf of the MindGreek entities. I  
15 think the -- the issue as far as we're concerned is fairly  
16 straightforward. MG Freesites is the company that operates the  
17 Pornhub website. MG Freesites is not contesting jurisdiction.  
18 We are in the case, and we've been in the case for quite a  
19 while. The issue we have is these four other entities really  
20 have either no relationship to -- to the Pornhub website and  
21 there are insufficient allegations, as we see it, of an alter  
22 ego relationship. So just a very quickly, and I won't spend a  
23 lot of time, but just very quickly through these entities.

24 MG Freesites II is -- no longer exist. Its assets  
25 have been absorbed into MG Freesites. So -- so they are -- are

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1 obviously not a proper party.

2 MG USA is a California company that's involved in  
3 pay-per-view and cable viewing of premium -- what they call  
4 "premium content," which is the professionally-produced  
5 content, which is not at issue in this case. It's a separate  
6 part of the business. It's the hotels and -- and -- and so  
7 forth. So they have really nothing to do with the case.

8 MG Billing handles the billing for those premium  
9 sites, again, for the professionally-produced content. They  
10 have nothing to do with the Pornhub website.

11 And the last one is MG -- MindGreek S.A.R.L., which  
12 is the parent holding company. They are a Luxembourg company.  
13 I understand that they do not have employees. They have an  
14 office in Luxembourg. And they are simply a holding company.

15 MG Freesites, which is, we believe the proper  
16 defendant, is a -- a real company. It's got bank accounts.  
17 It's adequately capitalized. There's a full observation of  
18 corporate formalities. And -- and as I mentioned, we believe  
19 that there's really no basis for any sort of alter ego  
20 allegation. So the -- the --

21 **THE COURT:** Let me ask this: On the holding company,  
22 does it have any financial assets? Or is it just on -- on  
23 paper?

24 **MR. MAYER:** My understanding is, it's just a holding  
25 company for the other subsidiaries. And so the relationship

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1 between MG -- MindGeek S.A.R.L. and MG Freesites is just a  
2 parent subsidiary holding company and a subsidiary company.  
3 They don't --

4           **THE COURT:** But -- but the assets are in MG  
5 Freesites, correct?

6           **MR. MAYER:** The -- the -- the assets, including those  
7 assets related to the operation of the Pornhub website, are all  
8 with MG Freesites. That's correct.

9           **THE COURT:** All right.

10          Mr. Salley, let me hear from you on these parties.

11          **MR. SALLEY:** Yes, Your Honor. May it please the  
12 Court?

13          **THE COURT:** Yes, sir.

14          **MR. SALLEY:** For the purpose of explaining our  
15 process, we put together a little presentation to kind of  
16 understand information. If it's okay, we can present some of  
17 the slides for you.

18          **THE COURT:** Sure.

19          **MR. SALLEY:** Tim, if you could start with No. 21.

20          So first and foremost, Your Honor, it's not just that  
21 our allegations -- the plaintiffs don't allege that these  
22 entities are separate and that they are kind of fulfilling  
23 different parts of the process in they endeavor -- in their --  
24 they put forth this transmission against our clients. It's  
25 more so that these entities were created for the specific

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1 purpose of separating liability in order for them to --

2           **THE COURT:** Let me ask you something. I mean, in  
3 many industries, separate subsidiaries are created for  
4 different purposes for -- for exactly that reason. There's  
5 nothing illegal about that.

6           **MR. SALLEY:** So inherently, there's nothing illegal.  
7 However, in this case, each of these entities based off of the  
8 information that we were able to receive -- now, granted, we  
9 did serve the defendants with some discovery to help establish  
10 some of these facts so we can get a better picture of how this  
11 corporate entity operates; however, we didn't -- we weren't  
12 able to receive those responses from the defendant. So we were  
13 ultimately left to our own investigation, which revealed --

14           **THE COURT:** Let -- let me ask you this -- and I'm  
15 going to tell all of you right now, I've tried to absorb all of  
16 this. Y'all lived with this case for two years; I haven't. If  
17 I get anything wrong, don't be bashful; tell me it's wrong.

18           But I seem to recall that with respect to -- I think  
19 it's the holding company, MindGeek S.A.R.L., you submitted  
20 something in one of your attachments that indicated there's  
21 something like 59 subsidiaries. Well, you know, we've hit  
22 four. Am I going to see the other 55 over the next year or so?  
23 I mean, how -- if -- if -- if the only thing that causes them  
24 to be a viable party here is because they're under the same  
25 umbrella, then you know, what's -- what's to keep you from

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1 naming everybody? I mean, it's hard for me to see how premium  
2 streaming service has -- has anything to do with Pornhub and  
3 anything that may be uploaded to -- to Pornhub. So do you have  
4 any facts that --

5 **MR. SALLEY:** Certainly.

6 So, first and foremost, we're not alleging that these  
7 individual entities are just related in some way that's not  
8 specific to the claims that have been brought in this case. We  
9 specifically allege that each individual entity, part of this  
10 huge conglomerate, take some specific part in the furtherance  
11 of this endeavor.

12 And so, first and foremost, if you go to --

13 You can pull up next slide, No. 22.

14 So if we look here, like you mentioned, MindGeek  
15 S.A.R.L., the holding company as you were, they represent the  
16 majority ownership of all of these entities that we've named as  
17 defendants in this case.

18 Now, we've submitted as an exhibit to our response in  
19 opposition a financial statement, which does include several  
20 other -- I think it's about 48 other entities that are also  
21 included within this conglomerate. At the time and through our  
22 own investigative process, we were able to identify these  
23 specific defendants to be directly related to the Pornhub  
24 industry. Based off of our understanding and based off of what  
25 we've been told by opposing counsel, this is the scope of these

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1 entities. However, I can't guarantee you that through  
2 discovery may not -- we might discover some more information  
3 that would link these groups to the, you know, process that  
4 we've bought forth to the Court.

5 At this time, without the opportunity to even  
6 investigate some of the facts in relation to how these -- how  
7 these companies were set up, how they operate, what information  
8 has flowed through, where the money goes, we have not had an  
9 opportunity to investigate any of that. And so at this point  
10 and at this stage of the game based off of what we have  
11 alleged, we believe these facts are sufficient.

12 **THE COURT:** Do you have any facts that show that  
13 these companies have, like, interlocking management or  
14 directors or --

15 **MR. SALLEY:** So --

16 **THE COURT:** -- or direction? Or is it just simply  
17 the fact that this is a conglomerate and -- and -- and you  
18 can't really tell at this point how the cash flows and you want  
19 to ask more questions about that?

20 **MR. SALLEY:** Your Honor, first, we've -- we've got  
21 information in evidence to support that many of the key  
22 individuals that operate the MindGeek S.A.R.L. entity are also  
23 directly related with the coming and goings of the subsequent  
24 businesses. For example, the consolidation and liquidation of  
25 the MindGeek Freesites II, if you look at exhibit -- bear with

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1 me, Your Honor.

2 It is the transfer agreement. It is signed by  
3 both -- it's signed by the same person for both companies.  
4 That's clear indication to us that these two companies aren't  
5 different. It's one person who's using, you know, two  
6 corporate entities to exercise one concerted effort. And so as  
7 we go through --

8 If you can hit the next slide for me, please.

9 Like I mentioned -- mentioned earlier, we've got this  
10 consolidated financial statement that establishes the breakdown  
11 of all of the different entities that are within the MindGeek  
12 umbrella. These are all under the one group of MindGeek.  
13 MindGeek advertises itself as a whole under this umbrella. And  
14 it's part of its business model to utilize the skills and tools  
15 to facilitate the sex trafficking that we've alleged in the  
16 complaint.

17 If you'll go to the next slide. You can keep going.

18 So like you mentioned, these are several companies  
19 that are all related to the MindGeek. As you indicate, there  
20 are MindGeek Freesites II, MG Billing, MindGeek USA. These are  
21 all part of the overall business structure and how they  
22 generate revenues.

23 Now, if you look closely --

24 If you go ahead to the next slide for me, please.

25 So the revenue recognition, generally speaking, is

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1 all from ad revenue, which is directly from the porn websites  
2 in which they then transient and sale ads and representations.

3 Now, specifically here in South Carolina, they've  
4 made several recognitions -- and -- and consentience with that.

5 The next slide for me, please.

6 So if you look here. Just by volume, you know, the  
7 United States is the largest trafficked destination for this  
8 company.

9 If you go to the next slide for me, please.

10 Specifically, in South Carolina, they've collected  
11 data to review how long individual viewers in South Carolina  
12 are viewing their contents specifically for the purpose to  
13 target and sell ads.

14 Continue.

15 They've even taken a look at some of the legal  
16 transactions that are happening in South Carolina related to  
17 their industry. Their concern is that, you know, pornography  
18 was going to be blocked on state computers in the state. And  
19 so they wanted to kind of get out there to their viewership to  
20 help have South Carolinians push back against that.

21 **THE COURT:** Well, I mean, if I -- I don't want to  
22 stop you unnecessarily, but I also don't want to waste time.  
23 MG Freesites AKA Pornhub, they're not contesting jurisdiction.  
24 They're in the case. You've got them. You've got all of this  
25 information about that.

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1           What I'm trying to figure out is, other than the fact  
2 that there may be some common reporting of revenue under a --  
3 a -- a financial statement, what do you have that shows that  
4 like the subscription services and streaming services and these  
5 other related media services that those subsidiaries, those  
6 companies, have anything to do with this?

7           **MR. SALLEY:** Well, first and foremost, Your Honor, as  
8 I mentioned, Pornhub doesn't represent itself as multiple small  
9 companies that handle various different aspects of the  
10 pornography industry. They hold themselves out as an umbrella  
11 of Pornhub, the largest and most successful pornography company  
12 known -- known to man. Each of these individual entities  
13 aren't independently identified as this is the Pornhub that's  
14 solely for, you know, movies. This is the Pornhub that's  
15 solely for, you know, paid content.

16           Pornhub in and of itself is what drives people. It's  
17 what drives the business. It's the name. It's the marketing  
18 tool in which they utilize to gain financial success.

19           And so it's through using content like the  
20 search-to-see film footage that was then uploaded, which they  
21 then marketed. They created their own tags through the  
22 services and pieces of technology that they developed to  
23 advance that.

24           One of the biggest things when you pull up MindGeek's  
25 website is they pride themselves on SEO technology, the ability

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1 to provide high access to billions of viewers or billions of  
2 searchers around the world. Right? And part in doing so is  
3 their ability to take that technology and apply it through the  
4 rest of their -- their business.

5 And essentially, what they're doing is they're taking  
6 that specific technology to facilitate the wrongdoings that  
7 taken place in this case. And -- and it's -- they're not  
8 unilateral in that -- in that endeavor.

9 If we go to Slide 28 and 29 -- excuse me. I said 34.  
10 31. 31. Sorry.

11 So again, on MG Freesites' website, they inform you  
12 that they're collecting your information and your user data,  
13 right? But MG Freesites is not the entity that collects and  
14 uses that data to sell ads. They, then, transfer that  
15 information to their -- to -- to the -- to their advertising ad  
16 revenue arm such that they can use that information to then  
17 create their unique tags, to create the specific targeted  
18 geolocated ad marketing to South Carolinians to maintain some  
19 of the software and server information that they've collected  
20 from users to determine what's trending and what's not  
21 trending, how they can use that information to better their  
22 revenues and their sales.

23 So ultimately, the two are -- are working -- they  
24 like to present as they're independently of one another. But  
25 they're working together through that line of shared

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1 information and facilitation. So yes -- so -- so -- and --  
2 and --

3 You want to add?

4 **MR. GENTALA:** Your Honor, my name is Peter Gentala.  
5 And I'm with the National Center on Sexual Exploitation. And  
6 just to speak specifically to the premium services, I -- you  
7 know, I hear counsel that there's a premium area that's  
8 separated and there might be entities that are there for it.  
9 But according to the allegations in the complaint, like  
10 paragraph 45, these Jane Doe plaintiffs were victimized. It  
11 was placed on Pornhub. And then, it was distributed out across  
12 all of the Pornhub sites. Some users of Pornhub might decide  
13 that they want to access through the premium service. Others  
14 might use the free version. But it's still part of their  
15 victimization overall.

16 The two forms of revenue that we're aware of related  
17 to the content on the site, the reason why these spy cam videos  
18 would have been placed there in the first place, are  
19 advertising revenue and then previous -- premium service  
20 revenue. So the fact that some of the people who would go and  
21 access this abuse video are coming -- coming there and paying a  
22 premium to be on Pornhub to see it linked to other videos is  
23 still relevant to this case and still part of the allegations  
24 that we've made related to how the abuse has taken place in the  
25 United States.

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1           Does that -- is there anything else related to -- I  
2 heard you asking about premiums.

3           **THE COURT:** Yeah. I understand there's an allegation  
4 there. But is there -- is there a good faith factual basis  
5 that anybody accessed these videos through the premium service?

6           **MR. GENTALA:** Well, Your Honor, we haven't had  
7 discovery yet. So we could find out, if we have the  
8 opportunity to ask that question of Pornhub, how many users are  
9 free users that are just seeing advertisements, and that's the  
10 way Pornhub is able to have revenue in first place, or how many  
11 of the users are using the premium side that also accesses  
12 video.

13           But the point is, it's all there available. And the  
14 premium user is the superuser. They get more time on the site  
15 or whatever is there, and including the access that they're  
16 seeking by paying that premium includes access to a video like  
17 this. They might get other things, but they can still get  
18 access to a video like this. At this point in time --

19           **THE COURT:** Is there --

20           **MR. GENTALA:** -- without --

21           **THE COURT:** I understand. Is there any -- what's the  
22 connection with the billing company other than it just handles  
23 money?

24           **MR. GENTALA:** Your Honor, I heard some mention of the  
25 United States. I'm understanding where the money is handled in

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1 with regard to delivery of the content in the United States and  
2 uses of the United States is -- is relevant to the case overall  
3 and to -- to those allegations in particular.

4 Now, it's been difficult to track all of the  
5 different subsidiaries, the way they move, the way they open,  
6 the way that close. Sometimes it's been feeling like we've  
7 been taking picture of running water. You know, we might have  
8 had that picture in time. We need to be able to have discovery  
9 to understand the true nature of the abuse that's happened and  
10 who's connected with it. If there's actually a subsidiary  
11 that's not connected with it and never was connected with it,  
12 then perhaps they don't belong in the lawsuit. But we need the  
13 actual ability to have discovery to understand what's happening  
14 there.

15 And the other side, you mentioned assets is we need  
16 to understand where the money actually is, the revenue that  
17 comes in as a result of this kind of behavior in the United  
18 States. So maintaining -- with -- without the ability to do  
19 some fact-finding in the normal standard civil legal process,  
20 it's going to be hard for the plaintiffs to be able to say,  
21 well, that -- that company has no relation to this at all  
22 whatsoever and then find out that that's the place where our  
23 clients can actually recover from the harm that's been done to  
24 them.

25 **THE COURT:** Well, I understand the risk. But I know

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1       that you can appreciate, too, that typically, I don't care how  
2       early in a proceeding it is, we just don't turn people's loose  
3       on a fishing expedition and say, "Okay, you've got -- you've  
4       got this company up here and it's got multiple subsidiaries.  
5       And one of them may have harmed your plaintiff. But we're  
6       going to let you just, you know, kind of do a proctology exam  
7       on all of them until you determine whether or not you -- you  
8       think you've gotten everybody." That generally isn't how it  
9       works, although I -- I -- I do get your point.

10           Let me ask this: Since MG Freesites II apparently is  
11       defunct and even on your own slide, you show it's been closed  
12       down, is there any reason why it should be an active party to  
13       this case?

14           **MR. SALLEY:** Your Honor, it's at this time that we  
15       understand or we've been told that MG Freesites assumed all of  
16       the assets and information that was held by MG Freesites II.  
17       So if -- if that is in the case the truth and they are a viable  
18       company that's in existence, then we have no problem with them  
19       not being in the case.

20           However, if a later date, we determine through the  
21       invest- -- through discovery that company does exist or that  
22       there weren't assets that were transferred or anything like  
23       that, then we would like the right to at least investigate that  
24       rather than just close the door on that. Because, again, all  
25       of this information has been private. It's not as if we were

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1 able to go look this information up and get definitive answers  
2 to our questions. And so out of abundance of caution.

3           **THE COURT:** I understand.

4           All right.

5           Mr. Mayer, let me ask you a couple of questions. Can  
6 you access these films through the premium service?

7           **MR. MAYER:** No. And there's no allegation that these  
8 have ever been on any of the -- and just to be clear, when we  
9 referred to the subscription sites, those are sites like the  
10 Brazzers website and Babes.com and some of the others. So  
11 those are the pay-per-view or pay-for-subscription sites.  
12 These videos were never -- and there's no allegation and  
13 there's no evidence that these videos were ever on any of those  
14 premium sites. And there's no evidence that there's any  
15 revenue that's been generated from any premium sites or by MG  
16 Billing that relates in any way to these videos.

17           So our view is that absolutely this is a fishing  
18 expedition. These are companies that represent a completely  
19 different part of the -- the business. They are not alter  
20 egos. And they have no place in this case.

21           And I just wanted to mention there were a lot of  
22 slides here about Pornhub and -- and so forth. Pornhub is just  
23 one asset or one brand of -- of -- of MindGeek. MindGeek is a  
24 large technology company that has various subsidiaries. Some  
25 of them handle mobile apps and games. Some of them handle, I

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1 guess, search engine optimization work. Some of them handle  
2 the subscription sites. But the entity that is responsible for  
3 the Pornhub.com website is MG Freesites. And they are in this  
4 case.

5 **THE COURT:** All right.

6 **MR. SALLEY:** Your Honor, if I may?

7 **THE COURT:** Yes, sir.

8 **MR. SALLEY:** Ultimately, our -- our -- our allegation  
9 here and how it balls down to is that MG Freesites would not be  
10 able to exist or operate without the technology facilitation  
11 and other means that are provided by MindGeek S.A.R.L. through  
12 that concerted effort. The sole purpose of MindGeek S.A.R.L.  
13 is to put forth this industry of pornography.

14 Yes, they have multiple pieces like they've just  
15 represented. But all of those pieces come together for one --  
16 for one endeavor, which is the promotion of pornographic  
17 material and to manage -- manage and maintain of Pornhub, the  
18 porn brand.

19 **THE COURT:** Okay. All right.

20 We need to move this thing along. And I'm not  
21 unsympathetic to the plaintiffs' desire to engage in -- in a  
22 broad front, if not a crusade, against, you know, the porn  
23 industry as it affects victims like this. However, you've got  
24 a distinct, specific set of plaintiffs who have a distinct,  
25 specific wrong done against them for which they're entitled to

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1 recover.

2                 Based upon the arguments of counsel and the  
3 submissions that the Court has received, I find that as to MG  
4 Freesites II and MG Billing LTD and MindGeek USA, Inc,  
5 plaintiffs have failed to state facts sufficient to state a  
6 claim against those parties at this time.

7                 With respect to MindGeek S.A.R.L., which acknowledged  
8 to be the parent company, I'm going to leave that in for right  
9 now. And -- and let the plaintiff do some additional discovery  
10 solely to see what that relationship is. And if that  
11 relationship is not such that there is any evidence of any  
12 actual control, then I'll be open to another motion on that  
13 matter.

14                 The flip side of that, Mr. Mayer, is if in their  
15 discovery related to how all this happened with MG Freesites  
16 and uploading to Pornhub and how it was viewed and all that,  
17 they determine that premium members could access this through  
18 MindGeek USA or that MG Billing has any kind of control or  
19 direction about the money, I'm also going to entertain a motion  
20 to bring them back in.

21                 But I think based on the pleadings as of this time,  
22 those -- those need to be dropped off at this point.

23                 All right. All right.

24                 Along those lines, let me next take up Trafficstars.  
25 And who has that?

## Motion to Dismiss - Trafficstars

1                   **MR. FRAY-WITZER:** Yes, Your Honor. And in fact, I --  
2 I think I can make it a little faster by going through all four  
3 of the other entities at once for you.

4                   So just to remind Your Honor what the activities are,  
5 xHamster IP Holdings, which is now known as Online Media IP  
6 Holdings, is a British Virgin Islands company. And it owns and  
7 manages the xHamster trademark. That -- that's what it does.  
8 It licenses it to Hammy so that they can operate the xHamster  
9 website.

10                  Wisebits IP is also an intellectual property company.  
11 They're in Cyprus. They own the intellectual property to the  
12 technology, the software, the computer code, and the like.  
13 Wisebits Limited provides IT services to Hammy Media.

14                  And Trafficstars is an advertising broker that sells  
15 advertising space not just for the xHamster.com website but for  
16 a whole lot of other websites, many of which have no relation  
17 to Hammy Media at all.

18                  We've presented the Court with affidavits, saying  
19 that none of these four companies operate the website in  
20 question. They don't have any control over what appears on the  
21 website. And in response, the plaintiffs have provided the  
22 Court with random, unverified Internet postings. That is the  
23 basis for their argument that those four entities should be in  
24 this case.

25                  Your Honor, the -- the sort of prevailing theory from

## Motion to Dismiss - Trafficstars

1 the other side is that, and you've heard it here today, that  
2 well, the companies act together and so they're sort of a  
3 single-business enterprise. There's actually law on  
4 single-business enterprise. And in South Carolina, and I'm  
5 sure I'm telling the Court things that it already knows, but  
6 the single-business enterprise theory requires the showing of  
7 more than the various entities or operations are intertwined as  
8 the theory had previously been applied by our courts. Rather,  
9 combining multiple corporate entities into a single-business  
10 enterprise requires further evidence of bad faith, abuse,  
11 fraud, wrongdoing, or injustice resulting from the entities'  
12 legal distinctions. There aren't any allegations of any of  
13 that in the complaint. Again, it's the Fifth Amended  
14 Complaint. There are no allegations of any of that.

15 My brother talks about needing discovery on the  
16 jurisdictional front. Your Honor might remember that a year  
17 ago, you had a conference with all of the lawyers. And you  
18 said if -- because they had raised that issue then. You said  
19 if you need some sort of jurisdictional discovery, you've got  
20 30 days to file a motion with me to ask for that jurisdictional  
21 discovery. It's been a year, and that motion has never come  
22 before this Court.

23 And I guess the -- the final thing that I would say,  
24 Your Honor, when you're looking at these four different  
25 entities, none of whom, of course, are within the United

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1 States. I looked it up this morning. The power and electric  
2 company for Cyprus is called the Bioland Electric. Well, by  
3 the theory that you're being presented here that, well, they  
4 all operate to -- to run a website, that they couldn't possibly  
5 run the website without the other entities' contributions,  
6 well, they couldn't possibly run the website without  
7 electricity, Your Honor. So if that theory holds, then you can  
8 pull Bioland Electric -- Cypress Electric Company not only into  
9 this court, but into any court within the United States, truly  
10 any court within the world since the website does appear  
11 everywhere in the world, and everyone has a personal  
12 jurisdiction. That's not the way that -- that personal  
13 jurisdictions ever work.

14                   **THE COURT:** All right.

15                   **MR. SALLEY:** Thank you, Your Honor.

16                   First, I would like to echo what they started with,  
17 which is that each four of these individual companies provide a  
18 specific role which in combination allows for -- to further  
19 effectuate the wrongdoing which was alleged in our complaint.  
20 Specifically here, we've alleged that each of these entities  
21 control a specific part of one business which resulted in the  
22 harm that was expressed and experienced by plaintiffs who were  
23 filmed without their consent and that these defendants made  
24 money off of them.

25                   It'd be great to say, you know, we've got this

## Motion to Dismiss - Trafficstars

1 slippery slope argument that we're trying to attach every  
2 single person that was involved with this business as a  
3 defendant in this case. However, that's not -- that's not the  
4 truth. That's not what we presented.

5 We presented clear -- clear connections between each  
6 of these entities. We can start here. Like I mentioned  
7 earlier, we've got some demonstratives.

8 Tim, if you'd like to pull the Slide 2 and 3, please.

9 Unlike the MindGeek framework, this is even more  
10 convoluted as to how all these companies interrelate to one  
11 another. But one thing that we do know is that there's pretty  
12 much one organization or entity involved with the processes  
13 that each of these entities are involved with.

14 As we can see, the ownership is a split seldomly  
15 between two people. As it moves down, each individual entity  
16 is related to the one previous, like I mentioned, to fulfill a  
17 specific part of that organization structure. Again, you know,  
18 Wisebits owns Trafficstars. Trafficstars is the advertiser,  
19 who sells advertisements on the xHamster webpage, which is how  
20 xHamster generates money, which is where the money goes and  
21 flows through Trafficstars again.

22 Online Media Entertainment, like we mentioned,  
23 they're an IP holding company. A lot of the intellectual  
24 property including the process of how all of this information  
25 is correlated to promote the sales and promote the business in

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1 and of itself are interrelated. Without -- it's -- it's --  
2 it's more than just saying that it's without, you know, that  
3 one piece of business that they would be able to move forward.  
4 It's that piece of the business that allows the business to  
5 exist.

6 Sure. We can say, you know, oh, well, what about the  
7 electricity? Or what about whose service -- who mops the  
8 floors? At the end of the day, those crucial pieces of the --  
9 of services aren't by third parties. These are all  
10 interrelated. It's one entity; two individuals. There aren't  
11 any larger scope.

12 Specifically to the allegations that were raised in  
13 the complaint, the plaintiffs did suffer a wrongdoing at the  
14 hand of this -- you know, this -- this constructed entity for  
15 the purpose of putting forth that type of contact and behavior.

16 We're not -- we're not arguing that they stepped  
17 outside of their business model. This is their business model.  
18 It's the purpose of, again, collecting this information,  
19 minding it and putting it out there so that viewers can view  
20 it, obtain it, pay for it and generate money revenue for them.

21 If you could pull up Slide 15 for me, please. Yes,  
22 one five.

23 Specifically with xHamster, one of the things that's  
24 great is Trafficstars LTD, the -- the -- the -- so, for  
25 example, they allow the user to determine -- or who they are

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1 engaged -- who they are contracting with to determine where  
2 they would like their ads to be placed, what demographic they  
3 are specifically targeting. Again, this in and of itself is  
4 how they manifest traffic to their website. It's how they  
5 drive business to themselves. It's how they create revenue.  
6 And again, it all flows through to the top. So one entity for  
7 that purpose.

8 That entity was created to create and generate this  
9 business. Each individual piece is an integral part of that  
10 business. They're all controlled by a singular -- it's not --  
11 it's not like each individual entity has free reign to do what  
12 it wants. You know, Trafficstars can't just decide one day  
13 that it's just not going to sell the ad revenue on xHamster.  
14 They all are, again, created for the specific purpose of  
15 putting all of this together to create this conglomerate to  
16 combat with MG Freesites, or MindGeek, the larger -- largest  
17 porn industry known to man.

18 **THE COURT:** All right.

19 Assuming that I take your diagram that you showed me  
20 in the first slide there, we have one of the two individuals  
21 and we have Trafficstars that show a connection to xHamster,  
22 which then is apparently run by Hammy Media, because Hammy is  
23 off to the side. And that's the only place it comes.

24 And I understand that Trafficstars being the  
25 advertising portion of this, there -- there could be an

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1 argument that to the extent that xHamster, or Hammy Media, is  
2 actually intentionally soliciting this kind of content,  
3 these -- these kind of spy cam voyeuristic videos, which may  
4 carry us over into the 230 argument we're going to have in a  
5 few minutes. But beyond that, even if I look at your own  
6 diagram, other than being interrelated companies in some way,  
7 given the general nature of your allegations in the complaint,  
8 how have you stated a claim against those other entities? The  
9 Wisebits, the -- the other entities.

10           **MR. SALLEY:** Certainly, Your Honor. Like I mentioned  
11 earlier, when this case was brought originally, the information  
12 that was available to plaintiffs was very limited. We only  
13 knew of the big names: XHamster and Pornhub, right? As we  
14 developed the facts and as we pled the facts, we pled claims  
15 against both of those entities or both of those what we believe  
16 were the -- the brand, so to speak. What we've learned and  
17 through the information that we've presented is that each these  
18 entities are engaged in that brand and as a part represent that  
19 brand. Unbeknownst to a regular person on the street who would  
20 not have had any access to this information, they wouldn't be  
21 able to discern, you know, Hammy Media from Online IP Holdings  
22 from Trafficstars. They would just know them as xHamster.

23           And so as we pled, and including in the facts in the  
24 complaint, we've included, like I said, the facilitation, so  
25 including the facts there alleged that by way of the CBN

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1 servers, by way of the -- and I'll pull it specifically, Your  
2 Honor. Give me a moment.

3 So you know, like I mentioned earlier, paragraph 45  
4 of the complaint, we have alleged that the porn tube sites are  
5 the primary way that filmed sex acts are distributed to the  
6 world in the digital age, yet there is very little  
7 accountability or oversight with regard to the origins of the  
8 videos. It's an intentional part of these websites, because of  
9 the unlimited ability to upload content by any user in the  
10 world is the business model that generates the most profit.  
11 For Pornhub and xHamster, content is king. The more content  
12 they upload, the more content they have, the more traffic is  
13 driven to the site, and more profits are generated from  
14 advertising the premium memberships that they sell.

15 And so, ultimately, it's that connection between what  
16 it needs to sell the ads and how that connects with the types  
17 of viewerships that they're generating and the tags that  
18 they're creating and the content that they are putting out and  
19 creating to drive that ad revenue. It's not that these  
20 companies -- it's not that, you know, they're -- they're  
21 subcontractors of one another.

22 It's not that they -- you know, it's that they are  
23 one single entity operating for the purpose of furthering this  
24 business model. It's been created and fragmented such that  
25 individuals wouldn't be able to pursue claims against them for

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1       this exact purpose, for them to sti my any plaintiffs' ability  
2       to establish jurisdiction based off of their very tangible  
3       contacts within the United States through their advertising --  
4       they contract with United States ad providers to put these ads  
5       on -- on their websites so that users that are, you know,  
6       located in the United States can have access to them. All of  
7       that is part of the continuity and the continuation of one  
8       business.

9                   **THE COURT:** All right.

10                  With respect to the motion, I'll be happy to hear any  
11        reply to that, but I also know that we've also got jurisdiction  
12        and other issues to deal with here. So let's go ahead and  
13        plunge into those.

14                  **MR. FRAY-WITZER:** Yeah. And I'll -- I'll make the  
15        response very brief, Your Honor, which is the graph that was  
16        put up on the screen is apparently based on a German newspaper  
17        article that isn't before the Court. I mean, you have  
18        affidavits from the four entities saying, "We don't own or  
19        operate the website. We don't control the content on the  
20        website."

21                  And on the other side of that, on the 12(b)(2)  
22        motion, you don't have an affidavit. You have nothing that's  
23        sworn. You have unverified Internet content.

24                  **THE COURT:** I've got the complaint.

25                  **MR. FRAY-WITZER:** Yes, Your Honor. But -- but, of

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1 course, you have the complaint which isn't verified and -- and  
2 it couldn't be. You know, it -- it simply couldn't be on these  
3 facts. And with respect to the relevant jurisdictional facts,  
4 the affidavit show that these are not the players that are  
5 involved with what shows up on the website.

6       **THE COURT:** All right.

7           Anything else on that?

8       **MR. FRAY-WITZER:** Not on that, Your Honor.

9       **THE COURT:** Okay.

10      **MR. FRAY-WITZER:** I'm sorry, Your Honor. I will say,  
11 if you would like, since we're in the personal jurisdiction  
12 realm, I've got about 30 seconds for Hammy Media because Hammy  
13 is also opposed --

14       **THE COURT:** No, we'll come back to that.

15      **MR. FRAY-WITZER:** Okay.

16       **THE COURT:** I've got lots of questions about Hammy.

17           All right.

18           Here's what I'm going to do on this one in terms of  
19 relationship and jurisdiction, sort of pendent jurisdiction,  
20 depending on where we go with the principals. At this point,  
21 and this is kind of along the same lines as the MG Freesites  
22 defendants. Given the fact that Trafficstars is admittedly an  
23 advertising branch that is involved with advertising for this  
24 website, and in spite of the self-serving affidavit that says,  
25 "We don't have anything to do with this," they apparently are

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1 selling advertising for this website, I'm going to leave them  
2 in for right now for the limited purpose of the plaintiff  
3 determining exactly what they advertise and how they advertise  
4 it. If it turns out their advertising on this website is of a  
5 more general nature and doesn't have anything specifically to  
6 do with the conduct complained of in this case, I'll entertain  
7 another motion to have them removed.

8 Likewise, with the xHamster IP Holdings LTD, it's my  
9 understanding that that essentially has to do with the hardware  
10 for the -- is that correct, Mr. Fray Witzer?

11 **MR. FRAY-WITZER:** The xHamster IP, Your Honor, holds  
12 the trademark for xHamster. Wisebits holds the --

13 **THE COURT:** Holds the --

14 **MR. FRAY-WITZER:** Yeah. The IP for --

15 **THE COURT:** -- computer equipment, IP equipment.

16 **MR. FRAY-WITZER:** Yes, sir.

17 **THE COURT:** All right.

18 Just so I know, is that Wisebits IP or Wisebits  
19 Limited?

20 **MR. FRAY-WITZER:** Wisebits IP.

21 **THE COURT:** Okay. All right.

22 Based on that, I'm also going to deny the motion as  
23 to Wisebits IP LTD and allow the plaintiff to determine what  
24 relationship it has through its provision of hardware and  
25 infrastructure for the website in terms of any direction or

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1 control over the website.

2                 Based upon the representations that there being  
3 nothing to the contrary that xHamster IP Holdings holds only  
4 the trademark for the website and that Wisebits LTD has nothing  
5 to do with the website, I'm going to grant the motion as to  
6 those at this time.

7                 I'm going to tell you both the same thing I've told  
8 you on all of these. If through the normal course of  
9 discovery, you determine that there is some direct connection  
10 to one of those, I'll entertain a motion to bring them back in  
11 based on later-discovered evidence.

12                 Likewise, on Wisebits IP, if there truly is no  
13 connection, I'll entertain a motion to kick them out. What I  
14 want to try to do is -- I'm trying to strike a balance between  
15 the fact that I understand plaintiff's frustration with a  
16 business model that is fragmented, although there's nothing  
17 illegal about that, nothing wrong with that.

18                 By the same token, I'm trying to balance that against  
19 the defense's legitimate position that companies that have  
20 nothing to do with this shouldn't be having to spend money and  
21 time defending it. I mean, they -- they ought to be out. So  
22 that's -- and that's where we are on that part.

23                 Now, I think that would bring us back to Hammy Media  
24 and the motion for judgment on the pleadings, which encompasses  
25 jurisdiction and a lot of things. And I'll be happy to hear

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1 from you on that.

2           **MR. FRAY-WITZER:** Thank you, Your Honor.

3           On the personal jurisdiction front, all that I'm  
4 going to really say about Hammy Media is that the entire basis  
5 for the exercise of personal jurisdiction is the operation of a  
6 website that is accessible anywhere within the United States  
7 and anywhere within the world.

8           I would point the Court towards the *AMA versus Wanat*  
9 case out of the Ninth Circuit that we cite in our briefs  
10 because it's almost identical sort of situation about the same  
11 percentage of users coming from the United States. And,  
12 basically, what the Ninth Circuit says is, "Well, look, adult  
13 entertainment is popular everywhere in the world." There's  
14 nothing about an adult entertainment site that purposefully  
15 avails itself of the United States market, even if the United  
16 States market is, in that case, the largest percentage. Over  
17 20 percent of the users are coming from the United States. And  
18 I think you'll see from the cases that we've cited with the  
19 Fourth Circuit similarly requires more than just the operation  
20 of a website, even if it's an interactive website. And I think  
21 because the personal jurisdiction front, that's -- that's where  
22 I'll leave that.

23           I assume Your Honor would like me to move to the  
24 Section 230 arguments?

25           **THE COURT:** That will be fine.

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1           **MR. FRAY-WITZER:** Thank you.

2           **THE COURT:** We've got to get there at some point.

3           **MR. FRAY-WITZER:** So the Section 230 arguments,  
4 Your Honor, are certainly more illegally complex. But luckily  
5 for us, the Fourth Circuit has perhaps the longest track  
6 record. And --

7           **THE COURT:** Well, let me make it easy for you. I  
8 think the way to look at this landscape is it's a blanket  
9 immunity except perhaps for FOSTA. So let's talk about how  
10 that might affect this.

11          **MR. FRAY-WITZER:** Absolutely.

12          So in 2017, Congress enacts FOSTA which amends the  
13 blanket immunity to provide what is a very narrow exception to  
14 the immunity for claims and the way that the work is in the  
15 statute, quote, brought under Section 1595 of Title 18 if the  
16 conduct underlying the claim constitutes a violation of  
17 Section 1591 of that title. And so, you know, this is getting  
18 a bit into the weeds. But, of course, Section 1595 is the  
19 civil liability section. Section 1591 enumerates the acts that  
20 constitute criminal conduct.

21          And Your Honor, there have been a series of cases  
22 over the last year or two years that basically talk about what  
23 is required in the civil context for the blanket immunity not  
24 to apply. I'll -- I'll point Your Honor towards a few cases  
25 that we have cited in the briefs.

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1           I think the most important is the *Reddit* case out of  
2 the Ninth Circuit, which was -- the United States Supreme Court  
3 just denied cert on that case, Your Honor. And the *Reddit* case  
4 is really instructive because not only does it encompass every  
5 type of allegation that the plaintiffs have made in this case,  
6 you knew about the conduct, you knew that there was -- you knew  
7 that there was unconsented to video on the site. You knew that  
8 people were using the site for improper purposes in the *Reddit*  
9 case. It's all child pornography. And they basically say not  
10 only did you know this stuff, you had -- you know, sub-Reddits  
11 is what they're called --

12           **THE COURT:** Uh-huh.

13           **MR. FRAY-WITZER:** -- subsections that all called  
14 things that make it abundantly apparent to anyone involved that  
15 the sections contain child pornography. And the Ninth Circuit  
16 said Section 230 immunity still applies and here is why.

17           No. 1, to be -- to be within this very narrow  
18 carve-out, you have to meet the *mens rea* requirements of  
19 criminal section of Section 1591. It says that the  
20 defendant -- it has to be the defendant's conduct that  
21 violates 1591, not someone else's. And in *Reddit*, just like  
22 here, what we're talking about are third-party users who have  
23 uploaded this content to *Reddit*. It's not *Reddit* itself; it's  
24 *Reddit*'s users have uploaded the content.

25           And the third part is they say that *Reddit* had to

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1 have actual knowledge of their participation for aiding and  
2 abetting the trafficking of specific individuals. Those are  
3 the three things that the *Reddit* case says are required.

4 I'll -- I'll say just a few other cases, then I'm not  
5 going to talk about them as much: *Doe versus Kik Interactive*,  
6 which is out of the Southern District of Florida; *M.H. versus*  
7 *Omegle*, which is a Middle District of Florida; *L.W. versus*  
8 *Snap*, which was one of the cases we cited recently to Your  
9 Honor in our supplemental, which is part of the Southern  
10 District of California; and the D.C. Circuit just decided the  
11 case *Woodhull Freedom Foundation*.

12 And every single one of those cases says the same  
13 thing. They say that the three things that I've enumerated for  
14 you are required to fall into this very, very narrow carve-out  
15 for Section 230 blanket immunity.

16 **THE COURT:** Would it be accurate to sort of summarize  
17 by saying as long as you are simply providing the platform and  
18 you are doing so passively, no matter how egregious the content  
19 is that is uploaded or the fact that you know about it, that's  
20 not enough. It requires a specific intentional knowing, almost  
21 transactional relationship with the person who's uploading that  
22 particular video.

23 **MR. FRAY-WITZER:** Yes, Your Honor. That -- that is  
24 precisely correct. And what I'll also say, because I -- I --  
25 you know, I anticipate that this is what you are about to hear,

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1 so I would like to sort of talk about it. Plaintiff's, a few  
2 days ago, provided the Court with their own notice of  
3 supplemental authority for the *GG versus Salesforce.com* case.  
4 If I can, Your Honor, I'd love to hand a copy up.

5 And so, with respect to this case, Your Honor, I will  
6 say that this is without question the plaintiffs best case.  
7 There's no question. The Seventh Circuit has disagreed with  
8 those cases that I have just cited to you. The Seventh Circuit  
9 has disagreed with the *Reddit* case. They disagree with the  
10 D.C. Circuit; with the Florida courts. This is without  
11 question the plaintiff's best test case on this subject. And  
12 Your Honor, it's still bad for them.

13 It's bad for them because even if you put aside  
14 drastically different allegations that were made in that case,  
15 and some of them are -- are particularly relevant -- in that  
16 case, Salesforce had a five-year intensive relationship with  
17 Backpage.com. They specifically tailored their software to  
18 Backpage's needs. There were meetings between Backpage and  
19 Salesforce's CEO. There was a series of ongoing contracts  
20 between the parties. It's precisely what Your Honor was  
21 describing when you talk about the relationship that would be  
22 required to take something out of the Section 230 immunity.

23 And then better than that, Your Honor -- and I don't  
24 know. Perhaps -- you know, perhaps it's a dense case and no  
25 one got to the end of it. But it's kind of important. Because

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1 the Seventh Circuit in discussing this distinguishes some of  
2 its earlier cases. And here is what the Seventh Circuit says  
3 in the Salesforce case. They referred to one of the earlier  
4 cases, GTE. And they say: "In GTE Corporation, plaintiffs had  
5 secretly recorded on video while they were undressed in locker  
6 rooms, bathrooms, and showers. Plaintiffs sued the company  
7 that had provided web-hosting services for websites that had  
8 offered the videos for sale. We affirmed dismissal on the  
9 pleadings, concluding that the alleged activities of the  
10 web-hosting services did not amount to 'culpable assistance' to  
11 those -- to those websites or the sellers of the videos because  
12 a 'web host, like a delivery service or phone company, is an  
13 intermediary is normally is indifferent to the content of what  
14 it transmits.'"

15 And they go on and they -- they sort of repeat this  
16 again. And they say, "Look. This case just isn't like the GTE  
17 case or some of our other cases in which you're looking at a  
18 website that simply had user-generated content that was  
19 posted." This case is different because of the incredibly  
20 intense relationship between the parties.

21 And then, finally, Your Honor, and -- and I'll go  
22 through these as rapid fires. I don't think it's going to take  
23 very long. But once you get past or if you get past the  
24 personal jurisdiction arguments and if you get past the  
25 Section 230 arguments, I should also point out that we've made

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1 arguments that are based on traditional 12(b) (6) that you  
2 simply haven't pled what you needed to plead.

3 Count 1 with respect to the Commercial Sex  
4 Trafficking under the TVPRA, I would say look at the recent  
5 Supreme Court case, *Taamneh versus Twitter*, which again in that  
6 case, there was an allegation that Twitter was aiding and  
7 abetting ISIS by posting ISIS videos that radicalized people.  
8 The Supreme Court unanimously came out and said, "We're not  
9 even going to decide the Section 230 issue because the things  
10 that you're alleging don't constitute aiding and abetting.  
11 They don't con- -- constitute the substantial -- substantial  
12 contribution." It wasn't a TVPRA case, but the concepts are  
13 similar.

14 I'd also note that it's not clear that there was  
15 actually allegation -- proper allegation of trafficking in this  
16 case. The plaintiff's -- and -- and I'm sorry. I should've  
17 said this earlier, because it is true. If what's alleged in  
18 the complaint is accurate, what happened is despicable. And  
19 there's no -- you know, we're not going to stand before you and  
20 say anything otherwise.

21 The proper defendants for those claims are before  
22 this Court. They just don't happen to be our clients. It's  
23 unclear how what was alleged constitutes trafficking. It's  
24 unclear that there's a commercial sex act.

25 When you turn to the civil RICO claim, which is Count

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1       2, it's very clear that this requires injury to business or  
2 property. And the cases routinely say that emotional distress,  
3 even as the Fourth Circuit said, quote, extreme mental anguish  
4 is not sufficient to sustain a civil RICO case. It has to be  
5 injury to business or property. It requires a common scheme.  
6 And I can't see how they could possibly argue a common scheme  
7 with Collins Murphy who supposedly recorded these videos seven  
8 years before posting them to any of the websites, if it was him  
9 that posted them to the websites. The complaint acknowledges  
10 that it doesn't know.

11                 Count 9 for Negligent Monitoring. We've cited a slew  
12 of cases for Your Honor that there is no duty for a website to  
13 monitor the content. If there was, it -- it would run  
14 completely afoul of Section 230.

15                 Count 10 for False Light. It's a cause of action  
16 that's not recognized in South Carolina.

17                 And with respect to Count 11, Civil Conspiracy Claim,  
18 again, I would point the Court toward the recent Supreme Court  
19 case in *Taamneh versus Twitter* -- I'm sorry, *Twitter versus*  
20 *Taamneh*, which disposes of that completely with respect to  
21 these type of allegations.

22                  **THE COURT:** All right.

23                  **MR. GENTALA:** Your Honor, with regard to personal  
24 jurisdiction, just to start for that, counsel cited the *Wanat*  
25 case from the Ninth Circuit. A lot of cases on the personal

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1 jurisdiction for Internet companies and websites are emanating  
2 out of the Ninth Circuit just because of the way the industry  
3 works.

4 Another important case to look to compare *Wanat* would  
5 be the *Will Co versus Lee* case, 47 F.4th 917, Will Co. And  
6 what you find there is courts basically looking at foreign  
7 technology companies and trying to decide whether they have  
8 enough significant touches with American jurisdiction in order  
9 to exercise personal jurisdiction.

10 Now, *Wanat*, one of the things they look at is  
11 advertising and how advertising takes place. So that's one --  
12 one key component is the targeted advertising can tip it over,  
13 can be something that establishes that kind of a significant  
14 touch. But it's a combination of factors. It's not just  
15 advertising, for example.

16 And what we have in this situation here is we have  
17 servers located on American soil. They're called CDN servers.  
18 And they're designed to make sure that the streamed content  
19 that comes from video and audio is a fast playback for the  
20 United States.

21 So in order to contract for that infrastructure in  
22 the United States, you're targeting American audiences  
23 specifically. You're saying this is a part of the world. We  
24 want to make sure that when you click on the video, there's no  
25 slow down for you. There's no hold up for you. It's a

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1 smooth -- so that -- those targeting investments in servers of  
2 the United States, the CDN servers, are significant. You'll  
3 see the Ninth Circuit say so much in the *Will Co* case.

4 I can -- if you have any other questions about  
5 personal jurisdiction, we're happy to --

6 **THE COURT:** Not at this point.

7 **MR. GENTALA:** Okay. Thank you.

8 Turning to Section 230 overall, I think the two  
9 phrases that are most important are traditional editorial  
10 functions, which is what -- since -- since the Fourth Circuit  
11 first looked at Section 230, in the *Zeran* case. And then,  
12 another important concept that courts have kind of galvanized  
13 around, which is material contribution. Material contribution.

14 So the question, any time that we have a defendant  
15 who is an Internet company, an Internet-service provider, is  
16 have they done enough to make a material contribution so that  
17 Section 230 isn't even on the table in the first place.

18 And we've alleged enough here to -- to have plausibly  
19 before you a material contribution on the part of Pornhub and  
20 on the part of xHamster, however the subsidiaries trickle down  
21 from there.

22 **THE COURT:** Well, since we're talking about xHamster,  
23 tell me exactly what you've alleged as to that with regard to  
24 them.

25 **MR. GENTALA:** With regard to Xhsmster, it's very

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1 similar to Pornhub. But we'll start with xHamster. With  
2 regard to xHamster, they have curated the pornography on their  
3 website and broken it down into categories. And they have said  
4 there's a category up there called "spy cam." And this is  
5 something we want you as a -- a -- creator of content to upload  
6 it to our website. You can label it as spy cam. Here's the  
7 label for it. This is basically voyeurism pornography designed  
8 to suggest that the person doesn't know they're being filmed.

9 They've had some examples back and forth in the  
10 pleadings that, well, that's a bad example because this person  
11 was clearly an actress. It doesn't matter. It all gets lumped  
12 in under the spy cam genre in the first place.

13 Our clients had no idea. They clearly did not  
14 consent to being filmed while they're changing after a hockey  
15 game at the university. And yet that content is uploaded  
16 lumped into the spy cam area.

17 **THE COURT:** But -- I understand that. And I think  
18 having that category makes things a little more problematic for  
19 the defendant. But here's the concern I have. As I read the  
20 cases, simply having a platform, simply providing a -- an  
21 Internet site for people to upload videos to, even if it's  
22 uploading spy cam videos, because for all they know, it -- it  
23 could be professional actresses who were just making it look  
24 that way. You know, there's -- who knows where the videos are  
25 coming from. For all they know, it -- it could have been a

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1 stage shower room or locker room scene. You know, it -- if  
2 that's all that there is, it seems to me under the cases,  
3 that's not enough.

4 Now, on the other hand, if they are soliciting spy  
5 cam videos where the victim doesn't know they're being filmed  
6 or they're offering remuneration for posting of those type of  
7 videos or whatever, then you start sliding over into that  
8 specific intentional transactional realm that I think gets you  
9 outside of 230. But just this broad general: "It's  
10 exportation. It's a spy cam. Our people didn't know they were  
11 being filmed," there's no evidence the defense knew that they  
12 were being filmed either.

13 So help me out there if you can. Cause I think -- I  
14 think that's -- I understand what you're trying to do. I'm  
15 just afraid that your argument isn't with me; it's with  
16 Congress. And that's -- that's the concern I have. So help me  
17 out -- help me out there on -- on any kind of direct  
18 involvement.

19 **MR. GENTALA:** I -- I think the landscape is -- is  
20 largely what you've said. I would say that when it comes to  
21 the material contribution, there's a clear category that's been  
22 recognized by the Ninth Circuit in the *Roommates.com* case where  
23 if the Internet company itself is creating categories that are  
24 an inducement to break the law, that can be a problem.

25 You know, in that case, it was a Housing Act case.

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1 And the provider there had several different categories. You  
2 could kind of scroll through and pick what you wanted to do.  
3 Some of them would've been a violation of the Housing Act. So  
4 not every person who used the Roommates.com website would be  
5 using it to get around the Housing Act, but there might be that  
6 person who decided that, "No, I'm going to say I don't want to  
7 house with a person of a certain race or a person of a certain  
8 religion" in violation of the Housing Act.

9           And the possibility enough was -- was there enough  
10 for the Ninth Circuit to come in and say, "Yeah. Sure. This  
11 is a -- this could be a material contribution. And the  
12 plaintiff should have a chance to prove their case. And they  
13 plausibly alleged enough here that the violation is there."

14           This is even stronger than *Roommates*. Because the  
15 content itself that they're soliciting is illegal both under  
16 state law and under federal law. Under federal law, it's 18  
17 U.S.C. 1801. It's illegal for this video voyeurism to take to  
18 take place at all. Period. It's prosecutable under that  
19 standard.

20           And here, you've got this -- this category that's  
21 there that's saying, "Hey. Those of you who want to create  
22 your own homegrown pornography, if you want to use something  
23 that victimizes someone else, file it under this category.  
24 Something that violates 801, file it under this category." So  
25 that's -- that's where the link is between the material

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1 contribution on the part of both xHamster and MindGeek when it  
2 comes to this.

3 Now, I have a few -- unless you want to stay on  
4 that --

5 **THE COURT:** No, that's okay.

6 **MR. GENTALA:** -- I have a couple of things based off  
7 of counsel's presentation.

8 The *Reddit* case -- well, it's -- I want to help with  
9 the category here. You raised FOSTA and so counsel started  
10 with the *Reddit* case, which is a FOSTA case.

11 In fact, the Fight Online Sex Trafficking Act has  
12 only been around since 2018. It's only been in front of one  
13 appellate court, Ninth Circuit. We have one decision on it,  
14 one reported decision, that's the *Reddit* case. It's currently  
15 pending right now -- review of it is currently pending in the  
16 Eleventh Circuit in the *Omegle* case, which my friend on the  
17 other side has cited. The District Court opinion that's  
18 pending right now in front of the Eleventh Circuit.

19 And then, the *GG versus Salesforce* decision by the  
20 Seventh Circuit, if you read it closely, I think it's Footnote  
21 21, the Court says, "Well, we think -- you don't even need to  
22 FOSTA here. We think that Section 230 hasn't been violated in  
23 the first place and that they have met the standard under the  
24 Trafficking Victims Protections Act." So I -- I want to  
25 represent the case accurately, although there's very strong

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1 language in it about what Congress wants to do with regard to  
2 Victims of Online Sex Trafficking, it is not by its own terms  
3 according to the footnote, Note 21, a FOSTA case.

4 It -- the Salesforce case though is really important  
5 when it comes to the actual elements of sex trafficking that  
6 you'd find in 1591 and which are similarly applicable in 1595.  
7 The -- the Court basically looks at this question of: Is it  
8 okay if you have a business that should know better, but they  
9 put their head in the sand? They can't -- I think it's "turn a  
10 blind eye" is the phrase that's used here.

11 And the Seventh Circuit says no, that's not okay.  
12 Because in 1591, Congress recognized two forms of sex  
13 trafficking. You have the direct sex trafficking and then you  
14 have parties who are associated with and facilitated the sex  
15 trafficking and benefited from it. That's why we are here.  
16 It's a beneficiary liability case under 1591.

17 Our clients have been harmed, just like it's spelled  
18 out in 1591. They have been obtained for a commercial sex act.  
19 And the websites here have benefited from that sex act.  
20 They've sent it all over the world and gained advertising  
21 revenue. And they have encouraged users to come and enjoy that  
22 humiliation and exploitation that was there. That's benefiting  
23 from the sex trafficking transaction.

24 You know, I heard: Does this fit in the commercial  
25 sex act actual context? And the answer is yes, it does. This

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1       is -- this is on Pornhub for a reason. This is on xHamster for  
2       a reason. It's a sexual fetish that is -- people go there for  
3       sexual gratification to watch other people in private  
4       situations without knowing that they're being recorded. That's  
5       why it's on the website in the first place. Feeding that  
6       fetish and lumping it in with other forms of pornography is a  
7       commercial sex act.

8           I want to -- I want to really encourage the Court  
9       that *Taamneh* case that the Supreme Court decided recently, it's  
10      worth looking at. Of course, we'd all know a lot about  
11      Section 230 and what the Supreme Court thinks about it if had  
12      actually decided the *Gonzales* case on that basis. But instead,  
13      it sent it back down. So we don't have Supreme Court guidance  
14      right now on the basis of *Gonzales*.

15           But the companion case, the *Taamneh versus Twitter*  
16      case, is all about construing the trafficking act, the  
17      anti-trafficking act. And what my friend shared about that I  
18      think is -- I think if you'll look at it, you'll see that all  
19      of the aiding and abetting analysis that the Court did there  
20      was specifically with reference to how the trafficking act  
21      considers aiding and abetting. And that had a very significant  
22      legislative history.

23           As a matter of fact, what the Supreme Court said was  
24      Congress had a particular case out of the D.C. circuit, I  
25      believe it was, that they had in mind. And so that was the

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1 form of aiding and abetting that Congress intended -- the  
2 common law of aiding and abetting that Congress intended to put  
3 into the anti-trafficking act -- I mean, the terrorism act.  
4 Okay.

5 So the terrorism act and now has an exhaustive kind  
6 of opinion with lots of guidance from the Supreme Court about  
7 what the common law of aiding and abetting is. That doesn't  
8 have anything to do with the trafficking act. We're here to  
9 talk about what Congress wanted to do for people who have been  
10 victimized specifically online in sex trafficking scenarios.

11 And the first thing that Congress did was it took a  
12 very serious step, which was amend Section 230. The First  
13 Circuit decided the *Backpage* case. *Backpage* repeatedly  
14 throughout the country had been raising Section 230 defenses.  
15 The First Circuit went along with Backpage on that. And  
16 Congress stepped in with FOSTA and essentially legislatively  
17 overturned what the First Circuit decided. First Circuit case,  
18 *Doe versus Backpage* is one of the cases my friends cite in the  
19 pleadings.

20 Congress came in and said Section 230, nothing in  
21 Section 230 should be construed to impair any right to pursue  
22 sex trafficking claims with 1591. Now, you have an argument  
23 that's being made across the country in court -- by court about  
24 how broadly do you read that. And the -- the way that the  
25 Ninth Circuit has read the language of FOSTA, I would submit

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1 that if that's -- if it's really that narrow, then Congress's  
2 change to Section 230 has no material function.

3 They stepped in and gave -- made it clear that  
4 victims of online sex trafficking have this -- this civil  
5 remedy. And the remedy that they gave them is so narrow that  
6 it really can't be proved. It really can't happen. Because  
7 230 is going to apply and they won't -- they won't have any  
8 chance to have discovery.

9 There's a -- you know, it's a long-standing principle  
10 that it would be absurd to go with that interpretation. Well,  
11 I encourage the Court when you -- when you -- next time you  
12 review *Reddit* or maybe you're thinking about your most recent  
13 review of the *Reddit* case, what's left of the ability of  
14 survivors of online sex trafficking to plead after -- after  
15 *Reddit* and how could that be what Congress intended when they  
16 stepped in to limit Section 230.

17 With regard to GTE, if the Court -- the *GTE* case was  
18 cited in the *Salesforce* case. And I appreciate counsel  
19 bringing that specifically up. I would just submit, if  
20 that's -- if that's material to the Court's consideration, we  
21 can definitely provide additional briefing on the *GTE* case. I  
22 think that the specifics there about how the spy camming took  
23 place, the kind of information that was there in front of the  
24 Court is important. And I would just make that request that  
25 we're happy to provide additional briefing on that.

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1           I don't -- it's been a while. But as I recall the  
2 pleadings, I don't remember a lot of back-and-forth about *GTE*,  
3 there was some about *Salesforce*, but not *GTE* itself. And I --  
4 and I would want the Court to have the fullest briefing on  
5 that.

6           **THE COURT:** All right.

7           **MR. GENTALA:** Thank you.

8           **THE COURT:** All right.

9           **MR. FRAY-WITZER:** Thank you, Your Honor.

10           So I -- I want to respond to a few of the points.  
11 And also, if I may, your colleague, Judge Gergel, recently  
12 issued a Section 230 ruling that I now think is -- is somewhat  
13 important. And I'd like to hand that up, if that's okay.

14           And Judge Gergel talks about, as -- as you have, the  
15 blanket immunity that is afforded by Section 230. And one of  
16 the cases that he talks about and it's a case that we've cited  
17 in our brief as well, the *Dyroff* case, which is another Ninth  
18 Circuit case, is also particularly relevant for the arguments  
19 that are being made. And for Your Honor's concern about the  
20 question about what about the creation of categories, we have  
21 cited -- and I won't go into them, but we've cited in our  
22 briefs case after case after case that says the creation of  
23 categories on a website is precisely the type of publishing --  
24 traditional publishing function, traditional editorial function  
25 that is meant to be covered by Section 230.

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1           And not only that, they go further, the cases go  
2 further, including the *Dyroff* case that's cited by Judge Gergel  
3 that says even algorithms that push people in particular  
4 directions. And that's become very relevant recently. Even  
5 those kind of algorithms don't take you out of Section 230  
6 protection.

7           The *Dyroff* case that Judge Gergel cites involved  
8 someone who search for a heroin-related search. The website in  
9 question pushed him towards heroin dealers. And he eventually  
10 purchased heroin from one of the heroin dealers that the  
11 website intentionally pushed him towards. And his -- after he  
12 died from ingesting fentanyl-based heroin, his decedents filed  
13 a suit against the website. And the Ninth Circuit said, you  
14 know, we're sorry, but this falls within Section 230. It  
15 doesn't matter if there were categories. It doesn't matter if  
16 the algorithms exist that helped push people in a certain  
17 direction. And the case for Judge Gergel here involves  
18 Facebook postings, which of course, you know, is the algorithm  
19 again, pushing people in certain directions.

20           This happened to be the -- the Dylann Roof murders  
21 where they sued Facebook. And -- or one of the decedents sued  
22 Facebook and said, "Facebook, you are pushing white supremacist  
23 content at this guy and you should be held liable." And Judge  
24 Gergel properly says --

25           **THE COURT:** Well, let me ask you this, because I

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1 think this is a distinction: Isn't there a distinction between  
2 an algorithm that is set up to basically just give people what  
3 they're looking for or more of what they're looking for and  
4 just move them to different places on the website and a website  
5 that actively solicits a particular type of content or  
6 particular genre of content that by its very nature is likely  
7 to be illegal?

8           **MR. FRAY-WITZER:** So I'll answer with two answers,  
9 Your Honor.

10           **THE COURT:** Because I think -- I think that's the  
11 difference here. I don't have any problem with what you're  
12 saying about what Judge Gergel decided or -- or -- or what  
13 happened in the *Dyroff* case or the fact that Dylann Roof was  
14 able to find right-wing hate groups on Facebook. That --  
15 that's fine. And even if he was mechanically moved in that  
16 direction, that's fine. Or I guess -- I'm showing my age. I  
17 guess I should've said digitally instead of mechanically.

18           But -- but if you've got a direct solicitation for a  
19 category that is a conscious business decision of the company  
20 as opposed to just a function of an algorithm, is that  
21 different?

22           **MR. FRAY-WITZER:** It may be different, Your Honor.  
23 I -- I actually think the algorithm is worse personally, but I  
24 take your point. And the answer I have for you is: We have  
25 cited case after case after case that says no. Creating a

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1 category, even if the category is an illegal category by its  
2 very nature, that does not take you out of Section 230  
3 protection. And in fact, that's precisely what was at issue in  
4 Reddit case.

5 **THE COURT:** Oh, I -- I -- no, I understand that. If  
6 I -- if I'm going to say the Ninth Circuit is the final word, I  
7 think you've got -- you've got your argument right there.

8 **MR. FRAY-WITZER:** And -- and it's not just --  
9 although my -- my brother said that was the only appellant  
10 court to have decided it, it's -- it's not accurate, Your  
11 Honor. I don't blame him. It was one of our more recent  
12 supplemental filings. But as I said, the *Woodhull Freedom*  
13 *Foundation* case, 223 US at Lexis 17170, is a D.C. circuit case.  
14 And they similarly came out and said, "No, no, no. The only  
15 way that FOSTA is constitutional is if you read into it  
16 limitations whereby" -- and then they adopt exactly what *Reddit*  
17 did in the -- in the Ninth Circuit. You know, you have to  
18 have the *mens rea*. And you have to have the actual  
19 participation in the Sex Trafficking Act. And you have to have  
20 known about it.

21 I want to -- to respond to -- to two other things  
22 quickly. One is with respect to the solicitation. And again,  
23 if you look at cases we've cited, case after case says the mere  
24 creation of a category, even an illegal category, is not  
25 solicitation. It doesn't drive anyone to -- to put videos

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1 there. It doesn't drive anyone to necessarily go there.

2           **THE COURT:** Well, there's a difference between  
3 creating a category, in other words, categorizing the content  
4 that's on your website and creating a category for the purpose  
5 of soliciting content for that category.

6           **MR. FRAY-WITZER:** Well, in truth, Your Honor, there  
7 isn't because if you're creating -- and this is true for all of  
8 the websites. You're creating a category and you're saying,  
9 you know, what you'll find in here is the following if users  
10 upload that. You know, and I won't beat a dead horse with  
11 Reddit, but certainly that's what happened where these  
12 categories were created. Category doesn't mean anything unless  
13 someone's putting anything into it. There isn't -- the cases  
14 are really uniform in saying that the creation of that category  
15 and allowing users to put things into that category is not a  
16 solicitation.

17           I will mention, because I haven't so far when the  
18 issue of renumeration was raised.

19           **THE COURT:** Uh-huh.

20           **MR. FRAY-WITZER:** I -- I do want to make a point that  
21 there was no payment whatsoever ever, and we have affidavits to  
22 this, to whomever it was who uploaded these particular videos  
23 at issue in this case. It's under a user named CW  
24 Distribution. There were never any payments made whatsoever  
25 from xHamster or any kind of xHamster-related entity to CW

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1 Distribution.

2           The entire system for xHamster from what I've seen  
3 has been changed. You can't upload a video anymore without  
4 providing a government identification and a photo of yourself.  
5 And then it goes through a third-party ID verification system.  
6 They've put into place all sorts of -- of protections.

7           The last thing that I'll mention, unless Your Honor  
8 has other questions, is my brother raised the *Roommates* case.  
9 First, I will say, the *Roommates* case out of te Ninth Circuit  
10 was followed by *Reddit* and every one of the other cases that  
11 we've talked about. And that's an argument that's raised all  
12 the time: Hey, but what about *Roommates*. And the Ninth  
13 Circuit has consistently come back and said *Roommates* was a  
14 really, really specific set of facts.

15           And what they were doing in the *Roommates* is you  
16 couldn't list your apartment without filling out the illegal  
17 categories. It's not just the illegal categories existed, it's  
18 that you couldn't submit your request to find a roommate  
19 without saying: What is your race, what is your sexual  
20 orientation, who -- you know, who are your -- you could not get  
21 around it without violating the law.

22           And so the Ninth Circuit repeatedly says in every  
23 case after that, "Hey, *Roommates* was different." It didn't  
24 just give you, "Hey, there's this category. Maybe it's legal;  
25 maybe it's not legal." It required you to break the law to use

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1 the website. And that's not the case here.

2 **THE COURT:** All right.

3 Mr. Gentala, anything else on -- on that?

4 **MR. GENTALA:** Just -- just briefly, Your Honor. With  
5 regard to the D.C. circuit's recent opinion regarding *Woodhull*,  
6 just to be clear, that is a facial attack of the  
7 constitutionality of FOSTA.

8 **THE COURT:** Whether -- whether it's  
9 unconstitutionally broad -- overly broad.

10 **MR. GENTALA:** It's a First Amendment case. And so  
11 the Court in a facial context is trying to decide how the  
12 elements would work. And it uses the *Reddit* case for that  
13 purpose. So I don't -- I want to -- I don't want to say that  
14 it's -- it's significant. Because you've got another appellate  
15 court that's addressing FOSTA. But they addressed it in such a  
16 different context. I don't they didn't definitively say, here,  
17 this is how we're going to read it moving forward.

18 The -- like I mentioned, we've got *Omegle* that's out  
19 there. With regard to the -- the user and representations that  
20 have been made about revenue being shared, that's one user. I  
21 think we've alleged that there's another different previous  
22 iteration, different IP address where the upload came from. I  
23 don't have it right in front of me. But there's another  
24 allegation as well.

25 And the point is, those are very specific

## Motion for Judgment on the Pleadings - Hammy Media

1 allegations. That is enough for the court to have as  
2 plausibility at this stage in the pleadings for us to be able  
3 to take discovery and find out from all of the defendants: Who  
4 it was that uploaded it? Did they have a business relationship  
5 with them? When was that uploaded? How many times was it  
6 uploaded? All of those types of things we should be able to  
7 look in. And we haven't had an opportunity to do that at all.

8 Finally, with regard to *Roommates* --

9 **THE COURT:** With respect -- with respect to the  
10 renumeration, didn't you in one or more of your paragraphs in  
11 the complaint allege that xHamster at some point relevant to  
12 this was offering some kind of revenue sharing for people who  
13 uploaded content?

14 **MR. GENTALA:** Yes. Both -- with regard to both --

15 **THE COURT:** Okay.

16 **MR. GENTALA:** -- companies, that's what -- that's  
17 what we've alleged is that revenue sharing could take place.  
18 And that's one of the incentives to -- to upload to a tube site  
19 in the first place. Even if you just take YouTube, people who  
20 upload their videos to YouTube, some of them are just having  
21 fun having it on the Internet. Others are more serious about  
22 it because they know if they get enough eyeballs on their  
23 content, then Google will start sharing revenue with them. So  
24 that -- that incentive is constantly there, that invitation to  
25 join with us and share in the revenue is there when you have a

## Ruling of the Court

1 tube site that is there.

2           And of course, the Ninth Circuit in the *Gonzales* case  
3 recognized that the revenue sharing claim is outside of  
4 Section 230 in the first place. And so we would respectfully  
5 suggest we need to at least be able to have discovery on  
6 that -- that aspect of things to be able to look at that.

7           I would say, you know, on *Roommates*, there's an  
8 important phrase in that case, and that is, Congress didn't  
9 create Section 230 to have a legal no man's land where nothing  
10 is illegal anymore. And here, you've got a case where you've  
11 got wealthy companies that have invited people to break the law  
12 and upload the evidence to their -- the website and they might  
13 even get a share of the profits afterwards. That sounds like a  
14 legal no man's land to me.

15           **THE COURT:** All right.

16           With respect to the motion, or motions, I think it  
17 was actually one in each case, by Hammy Media, I find that at  
18 this procedural posture in the case, and given the allegations  
19 made in the Fifth Amended Complaint, I believe that the motion  
20 should be denied.

21           I do find that there is at -- at least a showing of  
22 sufficient jurisdiction. And likewise, there are sufficient  
23 allegations to state a claim outside of Section 230. And I  
24 find that the complaint at least as alleged states sufficient  
25 facts to state claims as set out; and therefore, I'm going to

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1 deny the motion at this time.

2 Having said that, I want to caution the plaintiffs  
3 because I think you understand that there is a very narrow path  
4 to navigate for these claims to ever get to a jury. This idea  
5 of financial remuneration, whether it took place, the  
6 methodology under which it took place, how that relates to the  
7 publication and who published it, you've alleged those things,  
8 but you're going to have to elicit evidence in discovery to  
9 support those things.

10 From the defense side, the defense, although I'm not  
11 granting their motion today, it's pretty clear from the case  
12 law that they sit in a position of strength. They have the  
13 protections of 230. There are questions about exactly how  
14 these entities work together, how they reach into this  
15 jurisdiction, whether or not your showing of purposeful  
16 availment is ultimately justified based upon the facts that  
17 will be demonstrated through discovery. Jurisdiction is  
18 something that can be raised at any -- any time and all of  
19 these other things can be raised on summary judgment.

20 And in the interest of judicial economy, I will tell  
21 all of you now, as you do this targeted discovery to find out  
22 these things, and you get the answers, there's no reason that  
23 the defense has to wait until the close of all the evidence  
24 with respect to Limestone and Mr. Murphy and everything else  
25 before they come back with a motion.

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1           If Hammy Media has -- you've had the opportunity and  
2 y'all have discovered what the facts are and if Hammy Media  
3 believes there's no genuine issue of material fact, they're  
4 entitled to the protections of the law, and for one or more  
5 reasons that may have been brought in these motions or that may  
6 show themselves later that they can get out, just because we  
7 stick summary judgment dispositive motions at the end of the  
8 scheduling order doesn't mean you have to wait until then to  
9 file. So I will encourage all of you to work diligently to get  
10 the answers to those questions. And then, we'll go from there.

11           Mr. Fray-Nitzer -- is it Witzer or Nitzer?

12           **MR. FRAY-WITZER:** Yes, Your Honor, Fray-Witzer.

13           **THE COURT:** Witzer. I'm sorry. I'm misreading my  
14 note here.

15           I agree with you. If I follow the *Reddit* case,  
16 plaintiff loses. I think that may be how this ultimately comes  
17 out. I think given the state of the law that at this point in  
18 the process, it -- it would be premature to short-circuit that.  
19 And that's why I've reached the decision that I have.

20           So motion Hammy Media, both of those motions, are  
21 denied.

22           As to MG Billing LTD, MindGeek USA, and MG Freesites  
23 II, those motions are granted.

24           As to Trafficstars, it's denied.

25           As to xHamster IP Holdings LTD, it's granted.

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1                   As to Wisebits IP LTD, it's denied.

2                   And as to Wisebits LTD, it's granted.

3                   Now, while I have you-all here -- and I'm going to  
4 talk to this group first, because with the Hammy Media folks  
5 and the MG Freesites folks involved, I imagine you're going to  
6 take a little longer. I want you to, in light of the Court's  
7 findings and rulings today, to get together and come up with a  
8 amended scheduling order that will allow for a reasonable  
9 period of discovery. I'm going to suggest to you that because  
10 of the peculiar issues related to these media defendants that  
11 you may want to insert a discovery plan that has phased  
12 discovery with respect to those questions so we can get that  
13 taken care of and dealt with sooner rather than later.

14                  And then, I'm interested in moving this case toward  
15 dispositive motions and trial as soon as possible. I realize  
16 plaintiff is casting about to find as many defendants as  
17 possible. And I'm not being derogatory in that. I know that  
18 happens in a lot of cases. But at -- at its -- at its base,  
19 this is a pretty simple case. You know, we've got Mr. Murphy  
20 misbehaving at Limestone. Everybody pretty much agrees about  
21 what happened. This -- this shouldn't be that -- that  
22 difficult.

23                  So, you know, these cases, one of them is a 2020  
24 case. They're -- they're lingering. And I know we've gone  
25 into a lot of amendments. We've been dealing with the Hague

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1 Convention and all of this other nonsense, but I -- I want you  
2 to put your heads together and come up with something that  
3 works.

4 Now, with respect to the other cases, you don't have  
5 the delays that are inherent in dealing with these media  
6 defendants. But yet because they're all related, we've --  
7 we've tried to have sort of a consolidated discovery to keep  
8 from people having to sit for multiple depositions and that  
9 type thing. So I'm going to ask you to coordinate with these  
10 folks on that amended scheduling order.

11 I also want you to give some thought to, given the  
12 number of plaintiffs and any differences that might end up  
13 being there with regard to defendants, the practicalities of  
14 trying these cases together. Separately, if we're going to  
15 separate them, how we separate them. I can separate them just  
16 by case number, whatever. But you've got a lot of common  
17 facts, a lot of common witnesses, common parties. So give that  
18 some thought.

19 In order for you to have some meaningful time the  
20 meet and confer and come up with a scheduling order in each of  
21 these cases that is going to be coordinated and practical, I'm  
22 going to give y'all 30 days from today to get that to me.

23 Consider carefully what you put into that scheduling  
24 order. Because given the spinning of our wheels we've done for  
25 the last two or three years, there's not likely to be a whole

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1 lot of opportunities to change it going forward. Obviously,  
2 things come up. But I want you to don't just come up with  
3 something quickly that you think will satisfy the judge and,  
4 ah, we'll go back and change it later. I want you to come up  
5 with something that's likely to work.

6 Anybody have any questions? Or have I omitted  
7 anything going through this?

8 **MR. SALLEY:** Judge, it's our understanding that  
9 MindGeek in general wants to take some IMEs of our clients.  
10 And as far as scheduling goes, we're trying to coordinate it.  
11 I think we've got a scheduling order that works and are  
12 discussing it. But light of figuring out the plan and getting  
13 things to move, I do have some concerns with, you know, with  
14 being at least 10 plaintiffs that need to be -- have an IME  
15 conducted and then depositions need to be taken prior to that  
16 and, obviously, our need to satisfy the Court's request to take  
17 some fact-finding depositions and discovery related to the  
18 targeted issues. We just want to make sure that if there are  
19 any disputes, how we should resolve those if there are any and  
20 particularly if the Court is interested in how we can kind of  
21 get that coordinated.

22 **THE COURT:** Let me answer the last one first. I'm  
23 not particularly interested in how y'all get that coordinated  
24 as long as you get it coordinated. If you run into any  
25 problems, you know what my preference is. You notify me you've

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1       got a discovery dispute. We'll set up a call. We'll try to  
2       get worked out.

3                   Mr. Mayer, in light of what's happened today, I -- I  
4       know everybody's been anxious to move forward with discovery.  
5       But I would suggest that maybe y'all have some conversations  
6       about this. I personally would prefer not to have these young  
7       ladies subjected to multiple IMEs for the same purpose. And I  
8       would think y'all could get together on that.

9                  **MR. MAYER:** Yeah. And Your Honor, I would just say  
10      we are working on -- we did receive some proposed 30(b) (6)  
11      topics. We're coming up with some dates. I'm hoping that we  
12      can accomplish all of those depositions in the next couple of  
13      months. Based on what's happened today, I think it would be  
14      worth a discussion as to whether it makes sense to -- to  
15      bifurcate discovery, focus on the summary judgment issues and  
16      then the damages issues afterwards, since I think the IME --  
17      that the -- the plaintiff's depositions and IMEs are  
18      likely to take the most amount of time. So I think that's  
19      something that we can -- we can discuss.

20               **THE COURT:** Yeah. And I'm not going to make any  
21      formal pronouncement about bifurcation. But I -- when I  
22      mentioned to you the idea of having phased discovery or  
23      discovery plan along those lines, that's what I was talking  
24      about. So y'all can decide how best that works for you.

25               All right.

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1 Anything else?

2 All right.

3 Hear -- hearing nothing else, I believe that takes  
4 care of today. Thank you for coming in. And we are adjourned.  
5 Thank you.

6 (The Court adjourns at 3:50 p.m.)

7  
8 \*\*\*\*\*

9 **C E R T I F I C A T E**

10 I certify that the foregoing is a correct transcript from  
11 the record of proceedings in the above-entitled matter.

12  
13 /s/Teresa B. Johnson

08/24/2023

14 Teresa B. Johnson, CVR-M-CM, RVR, RVR-M

Date

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